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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON

14 UNITED STATES OF AMERICA,

15
16 Plaintiff,

17 v.

18
19 RONALD CRAIG ILG,

20 Defendant.
21

Case No. 2:21-cr-00049-WFN

**DEFENDANT'S RESPONSE TO
UNITED STATES' MOTION FOR
RECIPROCAL DISCOVERY**

22
23 COMES NOW, the Defendant Ronald C. Ilg, MD ("Dr. Ilg"), by and
24 through his attorneys of record, Carl J. Oreskovich and Andrew M. Wagley of
25 Etter, McMahon, Lamberson, Van Wert & Oreskovich, P.C., and hereby
26 submits the following Response to the United States' Motion for Reciprocal
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28 Discovery (ECF No. 111).
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1 First, the Government requests “reciprocal discovery, pursuant to Rule
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3 16(b) of the Federal Rules of Criminal Procedure.” (ECF No. 111 at 1.)

4
5 Pursuant to Fed. R. Crim. P. 16(b):

6 **(b) Defendant's Disclosure.**

7 **(1) Information Subject to Disclosure.**

8 **(A) Documents and Objects.** If a defendant requests
9 disclosure under Rule 16(a)(1)(E) and the government
10 complies, then the defendant must permit the
11 government, upon request, to inspect and to copy or
12 photograph books, papers, documents, data, photographs,
13 tangible objects, buildings or places, or copies or portions
14 of any of these items if:

15 **(i)** the item is within the defendant's possession,
16 custody, or control; and

17 **(ii)** the defendant intends to use the item in the
18 defendant's case-in-chief at trial.

19 Fed. R. Crim. P. 16(b)(1)(A); *but see* Fed. R. Crim. P. 16(b)(2) (excluding
20 certain items from “discovery or inspection”). The Rule 16(b)(1) duty of
21 disclosure is continuing in nature. *See* Fed. R. Crim. P. 16(c); LCrR 16(c).
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23 The Federal Rules of Criminal Procedure are supplemented by the Local
24 Criminal Rules of the Eastern District of Washington. In turn, LCrR 16(b)
25 indicates:
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28 No later than fourteen (14) days before trial, the defense shall make
29 available for inspection or copying all the Rule 16(b) material
30 (documents and objects, reports of examinations and tests, and
31 expert witnesses opinions, the bases and reasons for those opinions,
32 and the witness’s qualifications) within defendant’s possession,

1 custody, or control that the defendant *intends* to use in defendant's
2 case-in-chief.

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4 (Emphasis in original). As such, Defendant will comply with its obligations
5 pursuant to Fed. R. Crim. P. 16(b)(1) "[n]ot later than fourteen (14) days before
6 trial." LCrR 16(b); LCrR 16(c).
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9 The Government also requests an Order "striking the testimony of any
10 defense witnesses for whom no witness statements are provided, pursuant to
11 Rule 26.2 of the Federal Rules of Criminal Procedure." (ECF No. 111 at 1.) In
12 turn, Fed. R. Crim. P. 26.2(a) provides:
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16 **(a) Motion to Produce.** After a witness other than the defendant
17 has testified on direct examination, the court, on motion of a party
18 who did not call the witness, must order an attorney for the
19 government or the defendant and the defendant's attorney to
20 produce, for the examination and use of the moving party, any
21 statement of the witness that is in their possession and that relates
22 to the subject matter of the witness's testimony.

23 As such, the Defendant will comply with the requirements of any statements
24 pursuant to Fed. R. Crim. P. 26.2 in a timely manner and in advance of trial. *See*
25 LCrR 16(b) ("The court encourages early disclosure by the defense of *United*
26 *States v. Nobles*, 422 U.S. 225 (1975) statements (Fed. R. Crim. P. 26.2) when
27 the reasons for withholding such statements are not implicated."").
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1 Finally, the Government seeks notice indicating whether “Defendant
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 3 intends to adduce evidence of any ‘other mental condition’ at trial” pursuant to
 4
 5 Fed. R. Crim. P. 12.2(b). (ECF No. 111 at 3.) Pursuant to Fed. R. Crim. P.
 6 12.2(b):
 7

8 **(b) Notice of Expert Evidence of a Mental Condition.** If a
 9 defendant intends to introduce expert evidence relating to a mental
 10 disease or defect or any other mental condition of the defendant
 11 bearing on either (1) the issue of guilt or (2) the issue of
 12 punishment in a capital case, the defendant must--within the time
 13 provided for filing a pretrial motion or at any later time the court
 14 sets--notify an attorney for the government in writing of this
 15 intention and file a copy of the notice with the clerk.

16 In turn, LCrR 16(b) indicates: “No later than twenty-one (21) days before trial,
 17 the defense shall . . . File and serve a written copy of any intention to . . . assert
 18 any other mental condition bearing on the issue of guilt or the issue of
 19 punishment in a capital case, pursuant to Fed. R. Crim. P. 12.2.” LCrR 16(b)(1).
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 21

22 As such, the Defendant intends to comply with all of the time requirements
 23 of LCrR 16(b), absent circumstances that would warrant late disclosure as a
 24 matter of law or equity. Further, Defendant will make a good faith effort to
 25 provide any such disclosures in advance of the deadlines contained in LCrR
 26 16(b) to the extent possible and as warranted. *See* LCrR 16 (“The purposes of
 27 this Rule are to expedite the transfer of discoverable material between opposing
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1 parties in criminal cases and to ensure that pretrial discovery motions are
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3 filed only when these discovery procedures have failed to timely result in the
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5 exchange of all legitimately discoverable material.”); *accord* LCrR 16(f) (“If
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7 discovery or inspection beyond that provided for above is sought, the attorney
8
9 for the government and the defendant’s attorney shall confer with a view toward
10
11 satisfying these requests in a cooperative manner without involving the court.”).

12 RESPECTFULLY SUBMITTED this 3rd day of June, 2022.

13 ETTER, McMAHON, LAMBERSON,
14 VAN WERT & ORESKOVICH, P.C.

15 By: /s/ Andrew M. Wagley

16 Carl J. Oreskovich, WSBA #12779

17 Andrew M. Wagley, WSBA #50007

18 *Attorneys for Ronald C. Ilg, MD*
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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all attorneys of record in this matter.

EXECUTED in Spokane, Washington this 3rd day of June, 2022.

By: /s/ Andrew M. Wagley
Andrew M. Wagley